IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.2856/07
Narendra Singh & Anr. Vs. ADJ No.6 & Ors.

5.10.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri G.P. Kaushik for petitioners.
Shri A.K. Bajpai for respondents.

Heard learned counsel for the parties.

The petitioners have challenged the order dated 5.3.2004 whereby his temporary injunction application was rejected as also the order dated 26.3.2007 whereby his appeal filed thereagainst was rejected.

The learned counsel for the petitioners has argued that even though the petitioners are in possession of the property in dispute and have merely

prayed for an injunction to the effect that the respondents may be directed to maintain status quo with regard to the property in dispute. Neither of the courts below have addressed this issue and rejected the application on altogether irrelevant grounds. It is argued that the petitioners in their plaint had asserted that their father deceased Ladu Singh was having khatedari over the land of khasra no.1/97 in Village Ramjipura and he had sold the said land to Jai Jawan Grah Nirman Samiti. The Samiti by making him as its member allotted to him a land measuring 1222.22 sq. yard on which the disputed house is constructed and where they are residing. It was argued that the respondents have not asserted their

possession either in reply to the temporary injunction application or in the written statement. The learned courts below therefore ought to have directed the parties to maintain status quo.

On the other hand, Shri A.K. Bajpai, the learned counsel for the defendant-respondents disputed that possession and argued that plaintiffs themselves did not specifically asserted their possession and that the proceedings u/s. 145 Cr.P.C. was initiated against the plaintiffs who were attempting to take possession of the land forcefully. It was argued that no evidence was led by the petitioners and there was no necessity for the courts below to have recorded any finding on the question of possession.

Having considered the arguments of the parties and perused the material on record, I find that though the pleadings of the parties on either side are not specific as to the point of possession nevertheless possession is one of the most important ingredient for accepting or rejecting the prayer for injunction of the plaintiff. Appreciation of such a contentious issue cannot be made directly by this Court in the absence of meaningful discussions by either of the courts below, therefore, while setting aside the impugned order, I deem it appropriate to remand the matter to the learned trial court again for reconsideration of the application of the plaintiffs for temporary injunction. That Court shall also take into consideration

as to what would be the effect and implication of the assertion made by the defendants that the plaintiffs had forcefully taken possession of the land and proceedings thereabout are pending under Section 145 Cr.P.C..

With these observations, the writ petition is allowed.

(Mohammad Rafiq),J.

Rs/-